

AMENDED IN SENATE APRIL 26, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE APRIL 14, 2011

SENATE BILL

No. 734

Introduced by Senator Price

(Principal coauthor: Assembly Member Galgiani)

February 18, 2011

An act to add Section 185034.1 of the Public Utilities Code, relating to small business.

LEGISLATIVE COUNSEL'S DIGEST

SB 734, as amended, Price. High-Speed Rail Authority: small business program: bidding preferences.

Existing law provides for various programs to encourage the participation of small businesses, as certified by the Department of General Services, in state agency contracts, and sets forth the duties of the Director of General Services and the directors of other state agencies in this regard.

Existing law, the California High-Speed Rail Act, creates the High-Speed Rail Authority to develop and implement a high-speed rail system in the state, with specified powers and duties. Existing law, pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A at the November 4, 2008, general election, provides for the issuance of \$9.95 billion in general obligation bonds for high-speed rail and related purposes.

This bill would require the authority ~~to identify essential components of, and adopt, a small business program as part of contracts to be~~

~~awarded by the authority relative to development and construction of the high-speed rail system. The bill would require the authority to provide certain bidding preferences and to establish a goal methodology to determine the appropriate level of involvement of small businesses in authority contracts. The bill would require at least one public hearing by the authority before the program is adopted and would require the authority to include a plan for outreach to small businesses., with the assistance of the Department of General Services, to prepare a small business, microbusiness, and disabled veteran business outreach and retention plan by July 31, 2012, in order to ensure that the percentage of contracts awarded meets the small business participation goals established by Executive Order S-02-06.~~

The bill would require the authority to form a small business advisory committee of at least 9 members at the time the authority initiates the preparation of the plan. The bill would require the authority to hold a hearing on the draft plan at least one month before the board meeting at which the authority intends to act on the proposed plan. The bill would require that all bidders' conferences convened by the authority include a presentation of the plan and the state's small business participation goals. The bill would require an additional price preference or score of 2.5% of the bid amount to be granted to qualified state-certified microbusinesses.

The bill would state that the authority shall be subject to the provisions of the Small Business Procurement and Contract Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) In order to keep faith with the promise to promote California
- 4 jobs following the passage of the Safe, Reliable, High-Speed
- 5 Passenger Train Bond Act for the 21st Century, the state should
- 6 aid, counsel, assist, and protect, to the maximum extent possible,
- 7 the interests of small businesses, including microbusinesses.
- 8 (b) California's microbusinesses are known to bring real
- 9 diversity to local economies and the state and deserve a fair share
- 10 of contracts awarded for the high-speed rail project. Although
- 11 microbusinesses comprise over 80 percent of California's certified

1 small businesses, and while it was the state's intent to afford
2 microbusinesses the same opportunities as other small businesses
3 in competing for state contracts, many microbusiness owners are
4 disadvantaged when competing against their larger small business
5 counterparts. Data compiled by the Department of General Services
6 shows that of the \$2.4 billion of contract dollars issued by state
7 agencies to small businesses and microbusinesses in fiscal year
8 2008–09, microbusinesses were awarded only 37 percent, or \$866
9 million worth of state contracting. Moreover, of the 103,371
10 contracts issued during the same timeframe, microbusinesses
11 received only 42,140, or 41 percent of the contracts issued by the
12 state.

13 (c) It is beneficial to the state to promote and facilitate the fullest
14 possible participation by California workers to train for new jobs
15 and careers in today's global economy.

16 (d) Therefore, it is essential to ensure that a fair proportion of
17 the total purchases and contracts or subcontracts for property and
18 services for California's high-speed rail system be placed with
19 these microbusinesses.

20 SEC. 2. Section 185034.1 is added to the Public Utilities Code,
21 to read:

22 ~~185034.1. (a) The authority shall work with the Department~~
23 ~~of General Services to identify essential components of, and adopt,~~
24 ~~a small business program as part of contracts to be awarded by the~~
25 ~~authority relative to the construction of the high-speed rail system.~~
26 ~~The program may have separate elements for small businesses,~~
27 ~~microbusinesses, and disabled veteran business enterprises, as~~
28 ~~those terms are defined in subdivision (c). The program shall~~
29 ~~include proper oversight of expenditure of state and federal funds,~~
30 ~~contractor compliance monitoring and enforcement efforts, tracking~~
31 ~~and reporting mechanisms, and prompt payment, reporting, and~~
32 ~~project closeout provisions.~~

33 ~~(b) In developing the small business program, the authority shall~~
34 ~~do all of the following:~~

35 ~~(1) Review and consider examples of existing small business~~
36 ~~programs used by other public agencies in California.~~

37 ~~(2) Establish a goal methodology to determine the appropriate~~
38 ~~level of involvement of small businesses in authority contracts,~~
39 ~~based on the likely nature of the work needed to be performed and~~
40 ~~the likely ability of the small businesses to do that work.~~

1 ~~(3) Provide three small business preferences, as follows:~~

2 ~~(A) Provide a 5 percent bid preference to a responsible bid~~
3 ~~meeting specifications that is submitted by a small business.~~

4 ~~(B) Provide an incentive to non-small business bidders that~~
5 ~~submit a responsible bid meeting specifications if the bid~~
6 ~~incorporates the participation of small businesses in the manner~~
7 ~~consistent with the goals set forth in the authority's program~~
8 ~~established pursuant to this section. A non-small business bidder~~
9 ~~shall be granted a 5 percent bid preference for meeting the goals.~~

10 ~~(C) Grant an additional price preference or score of 2.5 percent~~
11 ~~of the bid amount to qualified state-certified microbusinesses that~~
12 ~~are local to a worksite.~~

13 ~~(4) Establish, if determined to be desirable by the authority, a~~
14 ~~prequalified list of contractors for certain types of authority~~
15 ~~contracts, including, but not limited to, architectural and~~
16 ~~engineering contracts.~~

17 ~~(5) Include a plan for outreach, including information on training~~
18 ~~and technical assistance that is available to assist small businesses~~
19 ~~in understanding and bidding on contracts to be offered by the~~
20 ~~authority. The authority shall specifically conduct a outreach~~
21 ~~campaign that contacts certified small businesses listed in the~~
22 ~~certification directories of the Department of General Services.~~

23 ~~(e) The authority shall hold at least one public hearing on the~~
24 ~~small business goal methodology required by paragraph (2) of~~
25 ~~subdivision (b), and on the overall program developed pursuant~~
26 ~~to this section. Following the public hearing, the authority shall~~
27 ~~adopt the plan at a regularly scheduled meeting of the board. When~~
28 ~~adopting the plan, the authority shall take into consideration~~
29 ~~comments from the public hearing and written comments that it~~
30 ~~receives in that regard, and any hearings the Legislature may hold~~
31 ~~prior to adoption of the plan.~~

32 ~~(d) Upon approval by the authority of the small business~~
33 ~~program, its provisions shall be included in the design-build~~
34 ~~procurement for Phase 1 and Phase 2 of the high-speed rail program~~
35 ~~and in the environmental, architectural, and engineering stage for~~
36 ~~Phase 2 of the high-speed rail program.~~

37 ~~185034.1. (a) The High-Speed Rail Authority, with the~~
38 ~~assistance of the Department of General Services, shall prepare~~
39 ~~a small business, microbusiness, and disabled veteran business~~
40 ~~enterprise outreach and retention plan in order to ensure that the~~

1 *percentage of contracts awarded for architectural, engineering,*
2 *manufacturing, and construction activities meets the small business*
3 *participation goal established by Executive Order S-02-06. In*
4 *developing the plan, the authority shall consider examples of*
5 *existing small business programs used by other public agencies*
6 *in California.*

7 *(b) When preparing the plan, the authority shall be guided by*
8 *the provisions of the Small Business Procurement and Contract*
9 *Act (Chapter 6.5 (commencing with Section 14835) of Part 5.5 of*
10 *Division 3 of Title 2 of the Government Code).*

11 *(c) At the time the authority initiates the preparation of the plan,*
12 *it shall form a small business advisory committee of at least nine*
13 *members, the majority of whom shall be selected from the small*
14 *business categories identified in subdivision (h). The initiation of*
15 *the planning process shall be by action of the authority.*

16 *(d) The plan required by this section shall be adopted by July*
17 *31, 2012. Prior to the adoption of the plan, the authority shall hold*
18 *a hearing on the draft plan at a monthly board meeting held at*
19 *least one month before the board meeting at which the authority*
20 *intends to act on the proposed plan. Both the draft plan and the*
21 *adopted plan shall be posted on the homepage of the authority's*
22 *Internet Web site. The authority shall include in all its procurement*
23 *documents a summary of the plan and a link to the entire plan on*
24 *its Internet Web site and shall implement the outreach strategy.*

25 *(e) All bidders' conferences convened by the authority shall*
26 *include a presentation of the plan and the state's small business*
27 *participation goals. The authority shall request a representative*
28 *of the Department of General Services to attend all bidders'*
29 *conferences and to answer all questions regarding the Small*
30 *Business Procurement and Contract Act.*

31 *(f) The authority shall be subject to the provisions of the Small*
32 *Business Procurement and Contract Act (Chapter 6.5 (commencing*
33 *with Section 14835) of Part 5.5 of Division 3 of Title 2 of the*
34 *Government Code). All contracting preferences granted by the*
35 *authority shall be consistent with Section 14838 of the Government*
36 *Code.*

37 *(g) An additional price preference or score of 2.5 percent of*
38 *the bid amount shall be granted to qualified state-certified*
39 *microbusinesses.*

40 *(e)*

1 (h) As used in this section, the following terms have the
2 following meanings:

3 (1) “Disabled veteran business enterprise” means an enterprise
4 that has been certified as meeting the qualifications established by
5 subdivision (g) of Section 999 of the Military and Veterans Code.

6 (2) “Microbusiness” means a microbusiness as defined in
7 paragraph (2) of subdivision (d) of Section 14837 of the
8 Government Code.

9 (3) “Small business” means a small business as defined in
10 paragraph (1) of subdivision (d) of Section 14837 of the
11 Government Code.

O